UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

ECUMEN d/b/a ECUMEN SCENIC SHORES Employer and KRISTY GROSSKURTH Petitioner and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFSCME COUNCIL 5 Union	Case 18-RD-2724

SECOND SUPPLEMENTAL DECISION
AND ORDER DISMISSING PETITION

On January 19, 2011, Petitioner filed this petition under Section 9(c) of the National Labor Relations Act, as amended. Following a hearing, on February 23, 2011, I issued a Decision and Direction of Election in this matter. Subsequently, on March 25, 2011, I issued a Supplemental Decision, amending the February 23 Decision and Direction of Election by ordering that the election in this matter conform with the requirements of *American Medical Response, Inc*., 344 NLRB 1406 (2005), and therefore I required a *Sonotone* election.

Both the February 23 and March 25 Decisions make clear that, in ordering an election in this matter, I was following extant Board law which held that there was no bar to processing this petition even though the incumbent Union had been recognized by the successor Employer. *MV Transportation*, 337 NLRB 770 (2002). In doing so, I rejected the Union's contention that this

petition should be dismissed to give the Employer and Union a reasonable period of time to negotiate a contract.

On March 23, 2011, the Board granted review of my February 23 Decision and Direction of Election. However, the Board denied the Union's request to stay the election. Therefore, on April 15, 2011, an election was conducted. The ballots were impounded and therefore have not been opened and counted. Thereafter, on August 26, 2011, the Board issued a decision in *UGL-UNICCO Service Company*, 357 NLRB No. 76, which overruled *MV Transportation*. As a result, on September 21, 2011, the Board remanded this matter to me for further consideration in light of the *UGL-UNICCO* decision.

In *UGL-UNICCO Service Company*, the Board restored the "successor bar" doctrine. In doing so, the Board found that "a new bargaining relationship … should be given a reasonable chance to succeed." Id. slip op. at p. 7. The Board also stated that it would apply different standards for the length of the bar depending on what actions the successor employer takes when it assumes operations. In the event the successor employer expressly adopts existing terms and conditions of employment, which therefore would become the starting point for bargaining, the reasonable period for bargaining would be six months. Id. at 9. On the other hand, where the successor employer recognizes the union, but unilaterally establishes initial terms and conditions of employment before proceeding to bargain, the reasonable period of time for bargaining would be a minimum of six months and a maximum of one year. Id at 9. The Board also announced that it would apply the new rule announced in this case retroactively to all pending representation cases.

As set forth in my February 23 Decision and Direction of Election, the record reveals that until January 1, 2011, the nursing home that is the subject of the instant petition was owned and operated by Lake County Nursing Board, a political subdivision of the State of Minnesota. The

name of the facility was Sunrise Nursing Home (Sunrise). Prior to January 1, 2011, Sunrise and the Union were parties to a collective-bargaining agreement that expired on December 31, 2010. Sometime prior to January 1, 2011, the Employer purchased the nursing home and then assumed ownership as of January 1, 2011. The Employer acknowledges as true the Union's contention that, upon acquiring the facility, a majority of the employees the Employer hired who fall within the unit previously worked for Lake County and were represented by the Union. In addition, the Employer does not contest the Union's claim that the Union requested recognition as the collective-bargaining agent of the Employer's employees. However, the Employer also argues, and the Union does not contest, that the Employer established its own terms and conditions of employment prior to hiring employees. Therefore, the Employer neither assumed the collective-bargaining agreement that expired on December 31, 2010, nor did it adopt the existing terms and conditions of employment.

Thus, the record in this case clearly supports a conclusion that the Employer is a successor who is obligated to recognize and bargain with the Union. In this regard, it is clear that: (1) the Union made a demand for recognition or bargaining; and (2) the Employer employed "a substantial and representative complement of employees, a majority of whom were employed by the predecessor," at the time of the Union's demand. See *St. Elizabeth Manor, Inc*., 329 NLRB 341, 344. fn. 8 (1999). It is therefore also clear that, with the Board's decision in *UGG-UNICCO*, further processing of this petition is barred in order to give the Union and Employer an opportunity to bargain. In this case, because the Employer unilaterally established initial terms and conditions of employment, the reasonable period of time that this bar will remain in effect is a minimum of six months and a maximum of one year from the date of the first bargaining meeting between the Employer and Union.

ORDER

IT IS ORDERED that the petition herein filed be, and it is, dismissed.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Second Supplemental Decision and Order Dismissing Petition may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **October 6, 2011**. *The request may be filed electronically through the Agency's website,* www.nlrb.gov,[1] *but may not be filed by facsimile*.

Signed at Minneapolis, Minnesota, this 22nd day of September, 2011.

/s/ Marlin O. Osthus

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[1] *To file the request for review electronically, go to* www.nlrb.gov, *select* ***File Case Documents****, enter the NLRB Case Number, and following the detailed instructions.*